

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6479 of 1984

with

FIRST APPEAL No 1380 of 1984

and

FIRST APPEAL No 2 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

PADMABEN BALCHAND

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 6479 of 1984
MR AM KAPADIA for Petitioners
MR SC SEN for Respondents
 2. First Appeal No 1380/84 and 2/85
MR SC SEN for Appellants
MR AM KAPADIA for Respondents
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/09/97

ORAL JUDGEMENT

1. In view of the subsequent developments which have taken place in the form of offer and counter-offer between the parties in respect of the land in dispute, it is not necessary for this Court to give out in detail the facts of the matters. Only few facts are to be given, which are necessary for disposal of these matters.

2. The petitioners, two in number, were allotted a plot bearing No.575 by the Government of Gujarat. That plot was to be returned to the Government of Gujarat, and therefore, the Government of Gujarat sold two plots of the land to the petitioners. The first petitioner was sold a plot of land admeasuring 40 sq. yds. bearing Survey No.303/A/2 in Final Plot No.104 forming section No.4 of the Town Planning Scheme No.4 of Railwaypura, Ahmedabad, and the second petitioner was sold a plot of land admeasuring 74 sq. yds. bearing Survey No.303/A/3 in the said Final Plot No.104. The sale aforesaid had taken place under the order of the Government dated 22nd April, 1976 and possession of those plots were handed over to the petitioners on 20th May, 1977 and accordingly, the names of the petitioners appeared in the property register. The Government was to take over the possession of plot of land of Survey No.575 from the petitioners on completion of construction by them on plots in Final Plot No.104 and the petitioners therefore submitted construction plans to the first respondent i.e. the Ahmedabad Municipal Corporation on 8th July, 1977 and the revised plans were submitted on 26th October 1977. It is the case of the petitioners that the Corporation has not send an intimation to the petitioners regarding the approval or otherwise of the aforesaid plans. It was taken to be a case of deemed sanction of the plans and accordingly they started the construction on the said plots of the land but admittedly the construction was demolished as per their case by some miscreants and anti-social elements. The petitioners then have taken the recourse to the Civil court by filing civil suits for declaration that the petitioners' construction plans are deemed to have been duly sanctioned. Those suits filed by the petitioners were decreed by the civil court and declaration has been given that the plan submitted by them deemed to have been sanctioned.

3. The Corporation has filed these two first appeals against the judgment of the civil court. The petitioner filed this special civil application against the order annexure 'A' dated 12th November, 1984 of the respondent

No.2 rejecting the application of their for supply of water connection for construction activity. The second order challenged in this special civil application is of third respondent dated 17th October, 1984 wherein the petitioners prayed for giving them the permission for stacking on street the building materials of construction of the building. There is no dispute between the parties that the construction on the land in dispute has not been made so far.

4. From the aforesaid facts, it is clear that the petitioners are occupying the land of plot No.575 as well as the other two plots which have been sold to them by the Government. The Corporation has come up with a case before this Court that the land in dispute is required by it for the public purpose i.e. for widening of the road. The offer has been given by the Corporation to the petitioners to have the market value of the land but the counsel for the petitioners has given a counter-offer to the Corporation that in nearby another land of the Corporation is available and in case the Corporation requires the land in dispute for widening of the road they have no objection and in exchange the another land may be given to them.

5. To take the instructions in this respect, the counsel for the Corporation has taken the time. Today again he has made a request for further adjournment on the ground that the present Commissioner due to his personal busy schedule could not take the decision so far and the new Commissioner will come and then he will take the decision.

6. From the offer and counter-offer one thing is clear that both the parties are ready to amicably settle the matter. The Corporation's counsel is not disputing that another land is available and there may not be any difficulty for it to exchange the land. It is true that in case the Corporation needs the land for public purpose i.e. for widening of the road then it has also the power to acquire the land or at the same time may get the land from the owner thereof by mutual settlement but the petitioners, plot holders, in fact are interested in the land and if the land is available then there may not be any difficulty to exchange the same. In view of these subsequent developments now I do not consider it to be appropriate to go on the merits of the matter.

7. In the result, all these three matters are disposed of in the terms that the offer of the petitioners in the special civil application, the plot

holders, regarding exchange of disputed land with another land of the Corporation may be considered by the Corporation within a period of four months from the date of receipt of writ of this order and in case the alternate land is given in exchange then further matter regarding giving the permission for construction etc. may be considered. However, it is open to the Corporation to take out the respective market value of the land in dispute and the land which may be allotted in exchange and if there is some difference then the petitioners may be asked to pay the same. In case this offer of the petitioners is not acceptable to the Corporation then the Corporation shall pass a reasoned order and copy of which may be sent to the petitioners by registered post. The special civil application and rule stand disposed of in the aforesaid terms with no order as to costs. Both the First appeals of the Corporation also stand disposed of in the aforesaid terms. Liberty to both the parties for revival of these matters in case of difficulty.

zgs/-